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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re OSWALDO M., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

OSWALDO M.,

Defendant and Appellant.

D060505

(Super. Ct. No. J228887)

APPEAL from an order of the Superior Court of San Diego County, Carlos O. Armour, Judge. Affirmed.

In this juvenile proceeding Oswald M. (the minor) admitted committing misdemeanor vandalism at Bell Middle School. (Pen. Code, § 594, subd. (a)(b)(1) & Welf. & Inst. Code,¹ § 602.) The remaining counts were dismissed with a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754) as part of a plea agreement. Following a

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

combined restitution and disposition hearing the court placed the minor on probation with certain conditions, including that he pay restitution in the amount of \$916.70 for the repair of damage to two doors at the school cafeteria.

The minor appeals contending the juvenile court abused its discretion in setting the amount of the restitution he is required to pay. We find no abuse of discretion and affirm.

RESTITUTION HEARING

Since the minor only challenges the amount of restitution, we deem it unnecessary to set forth a statement of facts regarding the commission of the underlying offenses.

The prosecution presented evidence from Dean Warner from the Risk Management Department of the San Diego Unified School District. He testified he gathered the work orders from the repair work to fix two doors to the Bell Middle School cafeteria. The two doors included a metal outer door (or fire door) and a wooden screen door. The requested reimbursement by the school was \$759.91 for labor to repair the outer door. The school requested \$105.11 for labor and \$51.18 for materials to repair the screen door.

Warner testified that in calculating the labor costs the school included the customary "burden" costs, which it always applies to labor costs whether charged to outside persons or to school departments. The burden cost was calculated at 103 percent of the labor costs.

Warner explained that the screen door had to be taken to the shop for repair. The outer door had to be repaired on site because it was considered an emergency because it was an entry door to the building itself.

In the arguments that followed the evidence the minor objected to the requested restitution on several grounds. First he contended the school should not receive any compensation for the labor because the staff was already employed by the school and would have been paid whether or not they did these repairs. The minor further contended he only damaged the screen door, and finally that the court should not impose the "burden costs" as part of the restitution order.

The court rejected the minor's arguments and ordered restitution in the full amount as requested by the school.

DISCUSSION

The minor contends that he should not be responsible for the damage to the outer door because there is no evidence he caused the damage. Further, he contends the trial court erred in imposing the "burden costs" at 103 percent of the labor costs. As we will explain, the record supports the trial court's exercise of discretion. Accordingly, we will reject the minor's contentions.

1. Legal Principles

Juvenile court decisions imposing restitution as a condition of probation are reviewed for abuse of discretion and will only be overturned when the record demonstrates the court has acted contrary to law or has failed to use a rational method to

set the amount of restitution. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542; *In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016; § 730.6, subds. (a)(1) & (h).)

Section 730.6 states in relevant part:

"(a)(1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

"(2) Upon a minor being found to be a person described in Section 602, the court shall consider levying a fine in accordance with Section 730.5. In addition, the court shall order the minor to pay, in addition to any other penalty provided or imposed under the law, both of the following:

"(A) A restitution fine in accordance with subdivision (b).

"(B) Restitution to the victim or victims, if any, in accordance with subdivision (h).

[¶] . . . [¶]

"(h)(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible."

2. Analysis

Although the minor only admitted to damaging the screen door, there is evidence that the break-in during which the minor damaged the screen door, also involved the outer door. There was, of course, no trial in this case because the minor admitted vandalism. However, Warner testified at the restitution hearing, without objection, that the repairs to both doors were conducted on an emergency basis, since the outer door had

also been damaged and it was an entry door to the building. Thus, the juvenile court could have rationally concluded that despite the minor's admission to only damaging the interior door, the evidence showed that both doors were damaged in the process of forcing entry into the cafeteria.

In determining the amount of restitution the court can reasonably consider dismissed charges and allegations and can consider damage that may have been done by others in the joint commission of a crime. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121-1122; *People v. Goulart* (1990) 224 Cal.App.3d 71, 79; *In re I.M.* (2005) 125 Cal.App.4th 1195, 1209-1210).

Further, the court may use a variety of rational methods to make the victim whole as a result of the criminal conduct. Restitution is not only to make the victim whole, but in the juvenile context, it also serves the important rehabilitative goal of requiring minors to take responsibility for their wrongdoing. (*In re Anthony M., supra*, 156 Cal.App.4th 1010, 1016-1017; *In re Alexander A.* (2011) 192 Cal.App.4th 847, 858.)

We will uphold a restitution order if there is a factual and rational basis for it in the record. (*People v. Saint-Amans* (2005) 131 Cal.App.4th 1076, 1082.) We do not reweigh the evidence on appeal. We simply determine if there is sufficient substantial evidence to support the determination and whether the trial court's decision is within its sound discretion. (*People v. Millard* (2009) 175 Cal.App.4th 7, 26.)

As we have noted, the record supports the court's implied conclusion that the minor, in conjunction with others damaged both of the cafeteria doors. There is no

dispute that they had to be repaired or that the amount of time to repair them was unreasonable. Rather, the minor contends he is not responsible for the loss and the burden costs should not have been applied.

We have concluded the court could reasonably find the minor responsible for all of the repairs. As to the overhead or burden costs, the court could reasonably conclude they were appropriate in order to fully compensate the school for its loss. The school routinely applies the overhead costs to its labor expenses for all of the work it performs. Such costs are necessary for the school to cover the actual expenses necessary to maintain its employment system. The court could rationally conclude that including the overhead expense in the overall repair costs was reasonable. The juvenile court did not abuse its discretion in ordering the amount of restitution in this case.

DISPOSITION

The juvenile court's order imposing restitution in the amount of \$916.70 is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.